IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Ram Chandra and another.

vs.

Bhanwari Devi and others.

S.B.CIVIL SECOND APPEAL NO.149/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 14.2.2006 PASSED BY SHRI DEVENDRA KACHHAWAHA, ADDITIONAL DISTRICT JUDGE, SOJAT IN CIVIL APPEAL DECREE NO.13/2001.

DATE OF JUDGMENT ::: 27.2.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the appellants.

Mr. KC Samdariya, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The appellants/defendants are aggrieved against

the judgment and decree dated 14.2.2006 by which the first appellate court reversed the judgment and decree dated 25.7.2001 dismissing the suit of the plaintiffs/ respondents and granted decree for eviction of the appellants from the suit premises.

Brief facts of the case are that the plaintiffs – heirs of the original landlord filed a suit for eviction of the defendants alleging that the suit property was let out to the defendant no.1 on 1.1.1977 on rent of Rs.75/- per month. The original landlord – husband of plaintiff no.1 and father of plaintiffs no.2 to 8 died and thereafter, the present suit has been filed by the plaintiffs on the ground of personal bonafide necessity of the suit premises for running business by one of the plaintiff Prakash Chand. The plaintiffs also claimed that the suit property has been let out by the defendant no.1 to the defendant no.2. The defendant no.2 is none else than the wife of the defendant no.1 only.

The trial court dismissed the suit of the plaintiffs after deciding the issues against the plaintiffs vide its judgment and decree dated 25.7.2001, therefore, the plaintiffs preferred regular first appeal. The said appeal was allowed by the judgment and decree dated 14.2.2006.

In this second appeal, an application under Order 41 Rule 27 CPC has been filed by the appellants seeking permission to produce additional evidence which are ; Crime Detail Report, statement of one of the plaintiff Suresh Kumar, a telephone bill in the name of Shri PC Surana which, according to the appellants, is of Prakash Chandra, for whose need the suit has been filed. The appellants also placed two photographs showing the location of the shop in dispute as well as location of the other shop which, according to the appellants, fell vacant and wherein another business is running.

According to learned counsel for the appellants, the person for whose need namely, Prakash Chandra the suit was filed, did not appear before the Court to give his statement for his need. It is also submitted that in fact, there were two shops in the same building of the plaintiffs – one was in the right side of the main gate of the building and another was in the left side. In one shop, the defendants are tenant whereas for another shop, the plaintiffs pleaded that that was given on rent to one Suresh Chand. According to learned counsel for the appellants, it has come on record in the evidence of the plaintiffs that in the said shop, which is of equal measurement, the tenant vacated the

suit shop and at the time of plaintiff's statement in trial court, a piao was running. It is also submitted that at present in that shop, another business is running which is clear from the photographs placed on record by the appellants along with the application under Order 41 Rule 27 CPC. It is also submitted that it is clear from Crime Details Report prepared by the police that in the said shop, which was in possession of the tenant at the time of filing of the suit, there is a business of Gulab Mehandi being run which is the business of the plaintiffs. It is further submitted that in fact, said Prakash Chandra is residing at Bangalore and he has got his Income Tax Number, CST & VST Numbers and TIN Numbers from Bangalore.

In view of these documentary evidence, according to learned counsel for the appellants, even if there was any need of the plaintiff son, that has come to an end.

Learned counsel for the appellants vehemently submitted that if during the pendency of suit, the possession of the other premises come in the hands of the plaintiff and he handed over it to another person and failed to explain the reason for that, then in view of the judgment of the Hon'ble Apex Court delivered in the case of Sri Balaji Krishna Hardware Stores. vs. Srinivasaiah reported in AIR 1998 SC 994, the need of the plaintiff cannot be considered as bonafide need.

Learned counsel for the appellants also submitted that a liberal view in taking the documents on record is required to be taken in view of the judgment of the Hon'ble Apex Court delivered in the case of Jayaramdas & Sons vs. Mirza Rafatullah Baig & Ors. reported in 2004 DNJ(SC) 642.

It is also submitted that the documents placed on record by the appellants are trustworthy evidence and existence of these documents has not been denied by the plaintiffs. It is also submitted that the shop which was in possession of the tenant at the time of filing of the suit has come in the share of said Prakash Chandra for whose need the suit has been filed, therefore also, other plaintiffs cannot seek eviction from the suit premises for the need of the person who has his own shop.

I considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below as well as the record.

It will be worthwhile to mention here that the suit for eviction was filed by the plaintiffs on 4.2.1984. The plaintiffs in their plaint stated that one another shop which is of equal size to the shop in dispute was lying in possession of one tenant Suresh Chand on rent of Rs.300/- per month. The plaintiffs

claimed that the defendants are in possession of the said shop as trespasser. This fact has been denied by the defendants in reply to para no.8. One of the plaintiff's statement namely Suresh Kumar was recorded on 7.12.1990 and in cross examination, it has come that the said shop lying in the southern side has been converted into a piao. Therefore, the shop which was in possession of the tenant in the year 1984 must have come in possession of the plaintiffs before 1990. The defendants did not choose to take any ground on this account of availability of shop to the plaintiffs by moving application under Order 7 Rule 7 CPC before the trial court for taking on record the subsequent event nor they choose to amend the written statement despite the fact that trial court decided the suit on 25.7.2001. Be it as it may be, the trial went on and the trial court dismissed the suit and even in the appellate court, the defendants did not choose to take a ground that subsequently said piao itself has been got vacated by the plaintiffs by submitting any application under Order 7 Rule 7 CPC or Order 6 Rule 17 CPC for amending the written statement etc. despite the fact that appeal remained pending for about five years. The first appellate court, after considering the conversion of the shop into piao, held the necessity of the plaintiffs and inspite of the fact that the same person for whose need the shop was required, did not

appear in the witness box. Not only this, the defendants' case throughout since 1984 was that plaintiff Prakash Chandra is doing business at Bangalore apart from the fact that in the written statement, the defendants stated that Prakash Chandra is doing family business of Mehandi and wants to produce evidence to prove this fact at second appellate stage, after more than 22 years from filing of the suit, which cannot be allowed.

In the application, it is mentioned that despite due diligence, the appellants could not got the documents which they are producing along with application, reference of which has been given in preceding paras. How it was due diligence in acting in such manner has not been given in the application nor even any specific dates have been given on which the defendants/appellants made any efforts to obtain police report of 2003 and the telephone bill is mentioned in the application. It will be further worthwhile to mention here that in the application under Order 41 Rule 27 CPC, the defendants did not choose to mention any relevant fact like when another shop fell vacant and came in possession of the plaintiffs nor they mentioned when it was converted into piao and when that piao was converted into shop. These facts are very much relevant because of the fact that admittedly, the defendants' shop is adjoining to the shop which was

converted into piao and thereafter, according to the appellants, it is used as a shop.

In view of these facts and circumstances, the application under Order 41 Rule 27 CPC is liable to be dismissed despite the fact that in a matter of taking evidence on record under Order 41 Rule 27 CPC, if the documents are trustworthy, a liberal view can be taken in view of the decision rendered in the case of Jayaramdas (supra). Accordingly, this application under Order 41 Rule 27 CPC is hereby dismissed.

So far as the fact of non-appearance of the person for whose need the suit has been filed is concerned, that has already been considered by the first appellate court in detail and I do not find any illegality in the same.

At this juncture, it would be further relevant to observe that the trial court was under the impression that for seeking eviction, the landlord is required to prove dire and pressing need. That view was erroneous and, therefore, the approach of the trial court was erroneous.

In view of the above, I do not find any substantial question of law involved in this appeal and this second appeal deserves to be dismissed.

At this stage, learned counsel for the appellants prayed that some time may be granted to the appellant to vacate the suit premises.

I considered this prayer of learned counsel for the appellants and looking to the facts of the case, this Court is of the view that the appellants be granted time upto 29.2.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellants furnish a written undertaking before the trial court within a period of two months from today that they shall hand over the vacant possession to the landlord by or before 29.2.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.3.2008. The appellants shall also deposit the rent month by month by 15th day of each succeeding month of their tenancy in the trial court or pay directly to the landlord.

In case of non-compliance of the order or default

in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya